



Fall 2006

Citizen Briefing Vol. 1 No. 1

Citizen Briefing

www.sandiegocityattorney.org

*Welcome to the
San Diego City Attorney's
Newsletter, Citizen Briefing*

On behalf of our deputy city attorneys and support staff, we are working hard to create a City that is safe and a City government that is honest and transparent.

*I want to share with you our accomplishments and our goals. So, please join me at our **2006 Report to the Citizens of San Diego** community meeting on **Monday, December 11** at 6 p.m. at the City Council Chambers, 12th floor, City Hall, 202 C Street in downtown San Diego.*

In the meantime, you can become more informed about the City Attorney's Office by visiting our Website at www.sandiegocityattorney.org.

I also encourage you to sign up to receive regular [E-mail updates](#) from our Office.

The City of San Diego established an independent, citywide-elected City Attorney through a City Charter revision in 1931. That means I work for you.

Sincerely,

Michael Aguirre
San Diego City Attorney

SEC Affirms Fraud in San Diego

The fraudulent municipal bond offerings settlement announced Nov. 14, 2006 between the United States Securities and Exchange Commission (SEC) and the City of San Diego was first advocated by City Attorney Michael Aguirre in February 2005, less than three months he took office as San Diego City Attorney.

In order to settle the SEC's action against it, the City has agreed to cease-and-desist violating securities laws in the future issuance of municipal bonds and will retain an independent consultant to monitor compliance with its disclosure obligations.

Unanimously approved in closed session by the City Council on October 24, 2006, the 22-page agreement effectively ends the SEC's investigation into the City as an entity. The SEC will still be able to pursue separate enforcement action against any individuals who may have committed wrongdoing in connection with the City's financial disclosure practices.

The SEC began its investigation of the City in February 2004. It was triggered after allegations of bond disclosure irregularities were confirmed by City officials on January 27, 2004.



City Attorney Michael Aguirre (rt.) and outside counsel John Hartigan announce the City's settlement with the SEC.

(Continued on page 5)

Inside this issue:

Roque de la Fuente	2
Mt. Soledad Cross	2
Mission Beach Safety	3
Your Prosecutors	3
Climate Change	4
Proposition B	4
In the Community	7

City's Pension Trial is Underway

Phase 1 of the City's pension trial, *SDCERS v. City Attorney Michael Aguirre, City of San Diego et. al.*, is expected to conclude shortly after Thanksgiving day. City Attorney Aguirre contends that enhanced employee pension benefits granted in 1996 and 2002 by the City Council in exchange for allowing the City to underfund its pension system were unlawful and must be rescinded.

Before resting the case, a pension expert hired by the City testified in court that these pension agreements added nearly \$900 million in new liabilities to the City's pension system. The City Attorney's previous calculations estimated the liability for those deals between \$500-\$700 million. The City's total pension deficit has

(Continued on page 6)

Taxpayers Save \$150 Million in de la Fuente Land Case

The taxpayers of San Diego celebrated a final ruling on September 19, 2006 that put to rest the majority of the \$94.5 million verdict against the City in a lawsuit filed by developer Roque de la Fuente, *Border Business Park v. City of San Diego*. With the inclusion of court costs, interest, and fees, taxpayers have saved over \$150 million with this verdict, handed down by the Fourth District Court of Appeals in Riverside, California.

"The excellent legal work of Kristine Wilkes at Latham & Watkins and Executive Assistant Attorney Don McGrath, resulted in a major victory for the citizens of San Diego," said City Attorney Michael Aguirre.

This ruling eliminated the majority of the multi-million dollar jury verdict of 2001 against the City of San Diego for allegedly breaching three development agreements (airport planning, truck traffic and a developer agreement) regarding the Border Business Park and for taking property without compensation.

A new trial will be held on the alleged breach of developer agreement claim (\$29.2 million) against the City, which may also be ruled in favor of the City of San Diego.

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Mt. Soledad War Memorial

U.S. Supreme Court Halts Cross Removal: Allows City's Appeals to Proceed

Several significant legal events involving the Mt. Soledad Veterans Memorial have occurred since voters approved Proposition A in the July 2005 Special Municipal Election.

Proposition A authorized the City of San Diego to donate the veterans memorial property to the United States for the purpose of creating a national memorial honoring veterans of the United States Armed Forces.

The San Diego Superior Court in October 2005 invalidated the contemplated donation as an unconstitutional preference for and aid to religion in violation of the California Constitution.

At the City Attorney's direction, an appeal was filed seeking to uphold the voters' desire to donate the property to the federal government.

On May 3, 2006, the United States District Court ordered the City to remove the centerpiece memorial cross from the Mt. Soledad Veterans Memorial within 90 days or face fines of \$5,000 per day if the cross remained on City property. The Court was acting on the original federal lawsuit filed in 1989 challenging the display of the cross on City property.

The City subsequently appealed to the United States Court of Appeal for the Ninth Circuit, and asked for a stay, on June 2, 2006, of the District Court's order pending appeal. Although the Ninth Circuit declined to suspend the order, United States Supreme Court Justice Anthony Kennedy granted the City's request on July 7, 2006, allowing

the appeal to proceed without the threat of removal or fines.

Events transpiring on the federal level have occurred as well.

The United States Congress passed additional legislation in August 2006, in an effort to effectuate federal legislation designating the Mt. Soledad Veterans Memorial as a national memorial. The legislation authorized the federal government to condemn the memorial property.

On August 14, 2006, President Bush signed the Mt. Soledad Veterans Memorial Act into law immediately vesting in the United States all right, title, and interest in the memorial. As a result, the memorial now rests in federal hands and no longer belongs to the City. Legal challenges to the federal condemnation are currently pending in the United States District Court.

Oral argument in the pending appeals was held during the week of October 15. A spirited debate before the California Court of Appeal questioned whether the court could objectively decipher voter intent in supporting Proposition A. The Ninth Circuit wrestled with the federal condemnation's impact. Appellate decisions are expected in the future.

For more information, visit the City Attorney's Website at www.sandiegocityattorney.org and click on Significant Reports & Legal Documents.

Neighborhood Prosecution Unit Works to Enhance Safety in Mission Beach

The Neighborhood Prosecution Unit (N.P.U.) in the Criminal Division of the City Attorney's Office joined City Attorney Michael Aguirre and District 2 Councilmember Kevin Faulconer at the regularly scheduled Neighborhood Watch Committee meeting in Mission Beach on October 19, 2006. The prosecutors and officials fielded questions from dozens of residents who were anxious about crime in the area, especially after the home-invasion robbery and sexual assault of University of San Diego students that occurred October 15. Questions included the following:

- 1) What can we do to be better protected from theft?
- 2) How can we improve lighting in the area?
- 3) How do we report transient criminal activity or illegal lodging?
- 4) What do I do when I see transients dumpster-diving?

The Mission Beach Neighborhood Watch Committee was coordinated by Bill Bradshaw and Sarah Blaine, two Mission Beach residents who began revitalizing the Neighborhood Watch program in Mission Beach this spring. Their goal is to expand Mission Beach's Neighborhood Watch program so that more community members will be involved, particularly the students who live in the area. After the October 19 meeting, more than 20 community members signed up as Block Captains.

While this forum occurred in the wake of the assaults in Mission Beach, the San Diego Police Department and the N.P.U. began the early planning stages of this partnership several months ago. The Beach Area Neighborhood Prosecutor, Teresa Martin, has collaborated with Tom Cleary, Senior Director of Community & Government Relations at the University of San Diego, to create safety forums for students who live in the beach areas. These forums have brought together the administrative and public safety representatives from the University, the City Attorney's Office, the San Diego Police Department, treatment providers, and counseling professionals to discuss ways to improve safety on and off campus.

Since the Oct. 19 meeting, a sub-committee comprised



Mayor's joint news conference, including City Attorney Michael Aguirre and District 2 Councilmember Kevin Faulconer, respond to apprehension of Mission Beach rape suspects.

of the Beach Area Neighborhood Prosecutor, Mission Beach residents, the City of San Diego Park and Recreation department, City of San Diego Streets Division, and other city departments was formed to discuss ways to improve safety in Mission Beach. Immediate action has resulted in an evaluation of lighting throughout Mission Beach and the replacement of 29 street lamp bulbs and plans to repair approximately 10 additional lamps. In addition, the sub-committee has walked the area together to identify locations where supplementary lighting could be installed.

Another result of the meeting is an effort to expand the San Diego Police Department's Mid-City camera project to Mission Beach, which would install cameras in selected areas that could monitor crime activity. The group is hoping to utilize the San Diego Police Foundation and other Mission Beach community funding sources, and donors have already stepped forward to finance the camera project as soon as a monitoring system and legal parameters can be put in place.

How community members get involved with problem-solving efforts

- Call the San Diego Police Department if you witness a crime, (619) 531-2000.
 - Attend local police and community problem-solving meetings.
 - Provide information to neighborhood prosecutors.
- Contact the San Diego City Attorney's office at (619) 533-5500 and ask to speak to the neighborhood prosecutor assigned to your area -

Kristin Beattie, Mid-City Neighborhood Prosecutor
Teresa Martin, Northern and Western Neighborhood Prosecutor
Gabriela Brannan, Southern Neighborhood Prosecutor
Nicole Pedone, Downtown Neighborhood Prosecutor
Lea Fields, Central Neighborhood Prosecutor

Work with the neighborhood prosecutors to ensure that offenders are held accountable.
 Please contact the Neighborhood Prosecution Unit in the Criminal Division at (619) 533-5500.

Taking on Climate Change

The Land Use and Environmental Section of the City Attorney's Office held a Community Forum examining San Diego's practices regarding climate change and global warming on August 31, 2006. Scientists from the Scripps Institution of Oceanography, and other local experts made presentations and City Attorney Michael Aguirre led a roundtable discussion that included public comment on the issue. The effort was spearheaded by Shirley R. Edwards, Chief of the Section, who has over 15 years of environmental litigation and advisory experience, including CEQA, NEPA, Clean Air Act, Endangered Species Act and other matters. Additional planning efforts were made by Deputy City Attorneys Nina Fain, Michael Calabrese, Tom Zeleny, Fritz Ortlieb, Jana Garmo, Grace Lowenberg, Malinda Dickenson, and Kathryn Burton. All were instrumental in organizing the Forum.



Shirley Edwards

In conjunction with the Forum, the City Attorney's Office issued *Interim Report No. 11, A Call to Action: City of San Diego Must Prepare its Infrastructure to Withstand Anticipated Impacts from Global Warming*. The Report discussed impacts of climate change on San Diego, reviewed the steps that the City of San Diego has already begun in terms of environmental best practices, and outlined further steps needed to respond to this increasingly acknowledged threat.

"Each of us can make a difference--we are empowered and can change our patterns of energy usage through things like conservation and purchase of efficient household appliances. A typical four-person household generates approximately 15,000 pounds of carbon dioxide per year through the common patterns of energy use for lighting, washing and drying clothes, powering the refrigerator, maintaining the hot water heater, cooking, watching television, and necessary vehicular travel," concluded the Interim Report.

Interested in seeing the Report? Check it out on the City Attorney's Website at www.sandiegocityattorney.org under the City Attorney Interim Investigative Reports.

Proposition B Passes: Voters Must Approve Pension Increases

The days of hiding pension deals are over.

Proposition B went before voters in November proposing that any increase in pension benefits for City employees, except cost of living increases, would be subject to a majority vote of the citizens of San Diego. It also requires an actuarial analysis of any increases to be included in the ballot pamphlet. Proposition B passed with 70.30 %, or exactly 166,799 citizens voting YES!

While the ordinance will sunset after 15 years, it is a good start to getting the pension system's financial house in order.

Below are City Attorney Michael Aguirre's remarks at a joint press conference with Mayor Jerry Sanders following election day on November 8, 2006:

What the public has given us is the authority to carry out their will. It is imperative that we do so swiftly, effectively and in good faith, so we achieve what their fundamental objectives are, which is to reform City government and City Hall.

Our staff will be preparing the implementation ordinance immediately. There is no legal basis for a meet and confer process regarding Proposition B -- there is no checking or conditioning of what the voters have decided to do. The one thing I can tell you is the biggest mistake that has been made in the past (by the pension negotiators) has been a failure to recognize the seriousness of the problem and to take action in a timely fashion. I think the people of San Diego should take great confidence in the fact that their Mayor has stepped forward, has taken on the opponents of reform and advancement, and now has a clear mandate to carry out the will of the voters. I'm hoping that we will see a new message from the leaders of our public unions to join with us and to work constructively to solve the pension problems.

SEC Affirms Fraud, continued

(Continued from page 1)

"The path we took put the City's interests first and now allows us to begin repairing our financial system in order to access the municipal bond markets," said City Attorney Michael Aguirre. "I would like to commend Mayor Jerry Sanders and our outside legal counsel John Hartigan of the law firm Morgan Lewis and Bockius, who were integral members of the City's negotiating team."

In imposing sanctions against the City, the SEC concluded that the City of San Diego violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit misrepresentations or omissions of material facts in the offer or sale of securities.

While not levying a fine, the SEC's cease-and-desist order reprimands the City for not disclosing to investors the massive, intentional underfunding of its employee pension and health care plans in connection with the offer and sale in 2002 and 2003 of over \$260 million in five separate municipal bond offerings.

The City also did not report the pension and healthcare plan underfunding in "continuing disclosure" documents related to \$2.29 billion in outstanding bonds for the purpose of updating investors on the state of the City's finances.

The SEC settlement requires the City to hire an independent consultant for a three-year period to:

- a) conduct annual reviews of the City's policies, procedures, and internal controls regarding its disclosures for offerings;
- b) make recommendations concerning these policies, procedures and internal controls; and
- c) assess whether the City is complying with its policies, procedures and internal controls.

The settlement also requires the City to implement all recommendations made by the independent consultant, or the City may suggest alternative methods, provided that the Mayor and City Attorney certify in writing to the SEC that the alternative method will achieve the same objective.

Focusing on the City's prior administration, the SEC concluded that the City of San Diego, through its officials, acted with *scienter*, which is, "a mental state embracing intent to deceive, manipulate or defraud."

Two criminal investigations related to the City's underfunding of its pension system in exchange for increased employee benefits are ongoing:

- a) On January 6, 2006, a federal grand jury indicted San Diego City Employees' Retirement System (SDCERS) Board Counsel Lorraine Chapin, Retirement Administrator Lawrence Grissom, and three former trustees Cathy Lexin, Terri Webster, and firefighter union president Ron Saathoff. They were charged with multiple felonies, including conspiracy, wire and mail fraud and aiding and abetting. The indictment said the defendants conspired to illegally obtain enhanced retirement benefits for themselves in exchange for allowing the City to underfund the employees' pension system.

"While not levying a fine, the SEC's cease-and-desist order reprimands the City for not disclosing to investors the massive, intentional underfunding of its employee pension and health care plans in connection with the offer and sale in 2002 and 2003 of over \$260 million in five separate municipal bond offerings."

- b) On May 17, 2005 the District Attorney's Office filed felony charges against five former SDCERS board members (Cathy Lexin, Ronald Saathoff, Sharon Wilkinson, Mary Vattimo and Terri Webster) and one current board member (John A. Torres). Ronald Saathoff, John A. Torres, Sharon Wilkinson, Mary Vattimo, and Terri Webster have each been charged with three felony counts of Government Code Section 1090 which states that "city officers or employees shall not be financially interested in any contract made by them in their official capacity or by anybody or board of which they are members." Cathy Lexin has been charged with two felony counts.

The City Attorney's remarks from his news conference can be viewed on the City Attorney's Website, www.sandiegocityattorney.org and clicking the Media Center icon, then clicking on Videos.

City's Pension Trial is Underway, continued

(Continued from page 1)

been estimated to be approximately \$1.4 billion – \$1.7 billion.

The City Attorney's action to void these pensions deals known as Manager's Proposal I (MPI) and Manager's Proposal II (MPII) is based on violations of California Government Code section 1090's conflict-of-interest laws; the California Constitution Article XVI, section 18, which requires voter approval before creating certain financial liabilities; and San Diego City Charter section 99 Liability Limit Law, which establishes the "pay as you go" principle as a cardinal rule of municipal finance.

The pension trial began on October 30, 2006 in the courtroom of San Diego Superior Court Judge Jeffrey B. Barton. The trial has been divided into three phases. Phase I will determine whether the appropriate parties are before the court, whether or not the Corbett and

Gleason settlements validate the pension benefits granted under MPI and MPII, and whether the judge can fashion an appropriate remedy.

City Attorney Michael Aguirre is asking for the judge to rule on three items. First, the Court needs to declare that the actuarial soundness of the pension system is the highest priority. Second, the Court should declare that the scheme to tamper with funding of the pension system was illegal. Finally, the judge should suspend his ruling for 90 days so that the Mayor, City Council and all other interested parties will have an opportunity to fashion a remedy of their own, without court order.

You can review both parties' opening statements of the pension trial, *SDCERS v. City Attorney Michael J. Aguirre, et. al.* GIC841845, by going to the City Attorney's Website at www.sandiegocityattorney.org and clicking the Media Center icon, then clicking on Videos.

Following are excerpts from San Diego City Attorney Michael Aguirre's Opening Statement:

It is my privilege as the San Diego City Attorney to represent the City of San Diego in this action that has so much significance for the City of San Diego. I will tell your Honor this morning that the City of San Diego will competently prove the facts to a point of moral certainty to your Honor. Irrespective of any burden of proof, irrespective of any doubt, the action we seek is a declaratory judgment -- a judgment that is important to the City of San Diego for its financial well being. The remedy that we are asking your Honor to apply addresses a systemic problem as a result of a scheme to place on the books of San Diego over \$700 million in pension benefits. No matter how much ordinance paint, no matter how much resolution whitewash, at the core is a rotten foundation for benefits that was created in 1997 and exacerbated in 2002 in violation of the municipal liability limit laws of our State Constitution, as well as the violations of the prohibited financial interest laws...Our evidence will present proof of the systematic impact of these benefits.

A comprehensive picture of the disintegration of the soundness of the pension fund as a result of tampering with the funding method is shown on this graph. The most significant indicator of disaster is the ratio to payroll that the liability bears. For instance in 1993 there was a liability of \$41 million with a payroll of \$320 million, or a 13 percent ratio. In 2004, payroll had grown dramatically to \$540 million. But the ratio of unfunded liability is almost exponentially increased to 253 percent of payroll. The problem is not about robbing pensioners, it's about informing them that the money is not there to pay for this, and with an accumulation of 8 percent, the liability continues to grow to this day and will eventually be the undoing of the system. They do not have the pensions they think they have.

Everyone's goal should be actuarial soundness. This is what is required under California law. The law states that prior to retirement, there is "no absolute right of fixed or specific benefits." What is required is a "substantial or reasonable benefit." This is good news. What it means is that in shaping the remedy, your Honor has the advantage of working with a system where only about a third of the liability is "fixed" by current retirees. Active members of the pension system – those not yet retired – account for \$3.6 billion in liability. Those who have yet to retire are in a different position than those who have already retired.

We believe that the law is so powerful and so flexible and so capable, that it can ameliorate, it can circumvent, it can reform, it can cleanse, clean up and correct the biggest problem. But we have to understand the nature of the problem. We need your Honor to tell us, was it a ball or was it a strike? Someone has to make that decision and, for good or ill, it has fallen on your desk to make it, your Honor.

On June 21, 1996, then-City Manager Jack McGrory told the City Council with the union representatives in attendance, "This is a package deal. If the lowered contribution is not adopted, the benefit improvement will unwind."

They all knew what was taking place, and were put on notice in every instance in 1997 and in 2002. What they landed on was a way to create debt for future generations. And if they can create it this way, the sky is the limit – they can create it the next day and the next day and the next. All they needed was to get the unions to go along by promising more benefits – hocking the future of our children in exchange for decreasing pension contributions. And that's exactly what they did.

This has been a long journey. And this is the last way station on the road to bankruptcy. There is no adequate remedy for the pension system except to eliminate this rotten core from the foundation of soundness and start clean.

In the Community...

October was Domestic Violence Awareness Month. The City Attorney's Domestic Violence and Special Victims Unit helped organize a march and rally at noon on October 4, 2006 at the City Concourse. City Attorney Michael Aguirre participated along with a number of speakers, agencies, and community groups whose mission is to provide services to victims of domestic violence and raise awareness of this important issue. Head Deputy City Attorney Gina Rippel supervises the Unit.



City Attorney Michael Aguirre, seen with news anchors Dan Plante and Susan Lennon, visits the KUSI Good Morning San Diego news every Wednesday morning at 7:15 a.m. Each week he provides an update on the legal matters that face the City of San Diego.



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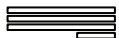
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Sign up for [E-mail Updates](#):



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Got a Complaint?

There are four types of complaint and reporting forms on the City Attorney's Website under the Criminal Division section. You are encouraged to download and submit these forms to the San Diego City Attorney, Civic Center Plaza, 1200 Third Avenue, Suite 1600, San Diego, CA 92101. The forms include the following:

Code Enforcement Unit (English/Spanish)

<http://www.sandiego.gov/cityattorney/pdf/ceucomplaint.pdf>

Consumer and Environmental Protection Unit (English and Spanish versions):

English:

<http://www.sandiego.gov/cityattorney/pdf/conscomplainteng.pdf>

Spanish:

<http://www.sandiego.gov/cityattorney/pdf/conscomplaintspan.pdf>

Drug Abatement Response Team (English/Spanish)

<http://www.sandiego.gov/cityattorney/pdf/dartservform.pdf>

Neighborhood Prosecution Unit (English only)

<http://www.sandiego.gov/cityattorney/pdf/npucomplaint.pdf>